

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
ROBERT C. DEE,

Plaintiff,

**VERIFIED ANSWER**

-against-

METROPOLITAN TRANSPORTATION AUTHORITY  
and CENTENNIAL ELEVATOR INDUSTRIES INC.,

**Index No.: 08 CIV 3493  
(J. McMahon)**

Defendants.  
\_\_\_\_\_X

Defendant, CENTENNIAL ELEVATOR INDUSTRIES INC., by its attorneys  
FAUST GOETZ SCHENKER & BLEE, as and for its answer to the plaintiff's  
complaint, respectfully alleges:

1. Denies each and every allegation set forth in the paragraphs numbered 1, 2, 3, 8, 13, and 14 and leaves all matters of law to the Honorable Court.
2. Denies knowledge and information sufficient to form a belief as to those allegations set forth in the paragraphs numbered 4, 5, 6, 7, 9, 10, 11, 12, 17, 18, 19, 20, 21, 22, 23, 24, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 49, and 51.
3. Admits each and every allegation set forth in the paragraph numbered 15.
4. Denies each and every allegation set forth in the paragraphs numbered 16, 25, 26, 27, 28, 29, 30, 31, 32, 34, 44, 45, 46, 47, 48, 50, 52, 53, 54, and 55.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5. Pursuant to the Federal Rules of Civil Procedure, the liability of defendant, CENTENNIAL ELEVATOR INDUSTRIES INC., to the plaintiff herein for non-economic loss is limited to defendant's, CENTENNIAL ELEVATOR

INDUSTRIES INC., equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

6. Plaintiff(s) have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economical loss and any future such loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiff(s) shall be reduced in accordance with the provisions of Federal Rules of Civil Procedure.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

7. Any damages sustained by the plaintiff(s) were caused by the culpable conduct of the plaintiff(s), including contributory negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiff(s), then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiff(s) bears to the culpable conduct which caused the damages.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

8. The complaint fails to state a claim.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

9. Whatever injuries and/or damages sustained by the plaintiff at the time and place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

10. Plaintiff failed to mitigate damages.

**AS AND FOR A CROSS-CLAIM AGAINST CO-DEFENDANT  
METROPOLITAN TRANSPORTATION AUTHORITY**

11. That if plaintiff was caused to sustain damages by reason of the claims set forth in the complaint, all of which are specifically denied, such damages were sustained by reason of the acts, conduct, misfeasance or nonfeasance, of co-defendant, METROPOLITAN TRANSPORTATION AUTHORITY, its agents, servants and/or employees, and not by this answering defendant, and if any judgment is recovered by plaintiff against this answering defendant, such defendant will be damaged thereby, and co-defendant METROPOLITAN TRANSPORTATION AUTHORITY is or will be responsible therefore in whole or in part.

WHEREFORE, defendant CENTENNIAL ELEVATOR INDUSTRIES INC. demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York  
July 9, 2008

Yours, etc.

  
\_\_\_\_\_  
FAUST GOETZ SCHENKER & BLEE  
By: Marisa Goetz (MG 6582)  
Attorneys for Defendant  
CENTENNIAL ELEVATOR  
INDUSTRIES INC.  
Two Rector Street, 20<sup>th</sup> Floor  
New York, New York 10006  
(212) 363-6900  
Our File No.: 9322-BRAC

TO:

IRA H. LAPP, ESQ.  
NEIMARK & NEIMARK LLP  
Attorneys for Plaintiff  
37 Congers Road  
New City, New York 10956-5135  
(845) 638-3012  
(845) 638-3093-fax  
File No.: W-334

Andrew Wiener  
WEINER MILO & MORGAN  
Attorneys for Defendant MTA  
220 Fifth Ave., 10<sup>th</sup> Floor  
New York, New York 10001  
212-213-1220  
212-889-5228-fax  
File No.: 393020

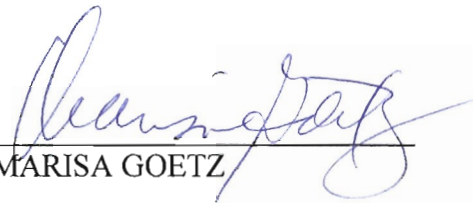
STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK    )

MARISA GOETZ, being duly sworn, deposes and says:

That she is the attorney for the defendant CENTENNIAL ELEVATOR INDUSTRIES INC. in the within action; that she has read the within Answer and knows the contents thereof, and that same is true to her own knowledge, except and to the matters herein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

That the sources of her information and knowledge are investigation and records on file.

That the reason this verification is being made by deponent and not by defendant CENTENNIAL ELEVATOR INDUSTRIES INC. is that the defendant is not within the county where deponent has her office.

  
MARISA GOETZ

Sworn to before me this  
9<sup>th</sup> day of July, 2008.

  
Notary Public

**MILAGROS BERRÍOS**  
**NOTARY PUBLIC STATE OF NEW YORK**  
No. 01786118508  
Qualified in Queens County  
Commission Expires Nov. 08, 2008

STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK    )

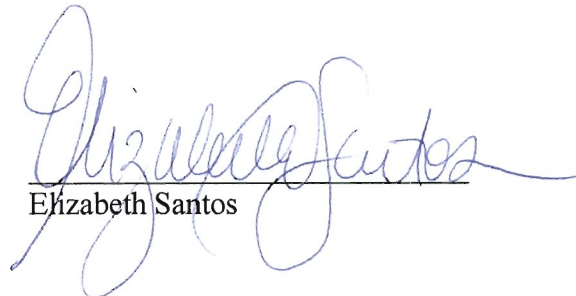
Elizabeth Santos, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Perth Amboy, New Jersey.

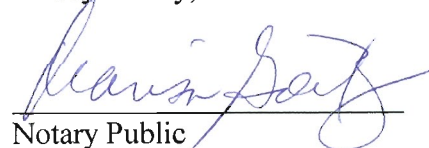
That on July 9, 2008, deponent served the within Verified Answer upon the attorneys and parties listed below by United States prepaid mail and via facsimile within the State of New York:

TO:   IRA H. LAPP, ESQ.  
      NEIMARK & NEIMARK LLP  
      Attorneys for Plaintiff  
      37 Congers Road  
      New City, New York 10956-5135  
      (845) 638-3012  
      (845) 638-3093-fax  
      File No.: W-334

Andrew Wiener  
WEINER MILO & MORGAN  
Attorneys for Defendant MTA  
220 Fifth Ave., 10<sup>th</sup> Floor  
New York, New York 10001  
212-213-1220  
212-889-5228-fax  
File No.: 393020

  
Elizabeth Santos

Sworn to before me this  
9<sup>th</sup> day of July, 2008.

  
Notary Public

MARISA GOETZ  
NOTARY PUBLIC STATE OF NY  
NO 02G06121680  
QUALIFIED IN NY COUNTY  
COMMISSION EXPIRES 2009